

REMARKS

Entry of the above amendments and reconsideration and withdrawal of the rejections are respectfully requested.

The language in the Bolich et al reference in column 2 concerning the "Hercules trade literature" is not clear as to exactly what the reference is referring. Hence, applicant does not understand exactly what trade literature this reference is referring to.

Reasons for and support for the new claims 34 to 36 is because in preparing claim 1 an inadvertence occurred in that a species was included as a member in the Markush group along with subgeneric terms; it is well accepted in the prosecution of patent applications that all of the members of a Markush group should be at the same level, that is, either all species or all subgeneric terminology. Hence, the species member 3-alkoxy-2-hydroxypropyl group has been deleted from claim 1 and has been added as new claim 36. Now, all of the members of the Markush group are at the same class or level, i.e., all subgeneric. This amendment eliminates any confusion due to overlapping. Support for claims 34 and 35 can be found on page 3, in lines 17 to 23.

The rejection of claims 1-33 under 35 USC 112, -second paragraph, as being indefinite is traversed. The term "household care ingredient" is defined in the specification has been modified to limit it to an ingredient of cleaning, sanitizing, polishing, pesticide or toilet preparation product ingredients. The active ingredients for these preparations are set forth on pages 5 to 7 of the specification. A person having an ordinary skill in the art would be well aware of what this term means because these terms are well defined in the household care product industry. The term "viscositying" is a term of art that is well known in the household care product industry. Moreover, applicant has defined this term as to exactly what he means on page 7; salts such as NaCl, NH₄Cl, and KCl are typically used as viscositying agents. The attached referenced entitled "Chemistry and Technology of the Cosmetics and Toiletries Industry", second edition, by D. F. Williams et al, pp. 45, 47, & 48 supports applicant's

definition of viscositying agent. On page 45, in section 2.3.2, it mentions that electrolytes are used to thicken shampoos and on page 47 in the second and third paragraphs the article discusses the effect of electrolytes on the viscosity of surfactant systems. This reference discloses the same compounds as applicant for increasing the viscosity (or viscositying) solutions. The Examiner is respectfully requested to withdraw this rejection.

The rejection of claims 1, 4-6, 8, 10, 13, 15, 16, 18, 20-22, 25, 26, 30, and 33 under 35 USC 102 (b) as being anticipated by t' Sas ('207) is traversed. Applicant invention is directed to a household care product composition of a vehicle system comprising a hydrophobically modified nonionic water-soluble polysaccharide polymer and at least one other household care ingredient. t'Sas does not disclose applicant's invention. t'Sas discloses a building material composition comprising 3-alkoxy-2-hydroxypropyl hydroxyethylcellulose where the alkyl has 1-10 carbons. It must be reiterated that this polymer is a non-associative thickener that is used in construction materials exemplified by concrete, tile cements and adhesives, projection plasters, stuccos based on cement and synthetic binders, ready; mixed mortars, manually applied mortars, under water concrete, joint cement, and the like. On the other hand, applicant's polymer has 3-24 carbons, which makes it both a non-associative or an associative polymer that can have radically different rheological properties that produce different functional properties when included in household care formulations.

Moreover, t'Sas does not disclose at least one other household care ingredient for a household care composition. t'Sas discloses a construction material composition that is significantly different from a household care composition. None of the household care products of the instant invention has a cement base. This patent is directed to a non-analogous art. Hence, this reference clearly does not anticipate the instant invention.

In view of the rejection, it is presumed that the Examiner is not giving the preamble and household care ingredient of the claimed composition any patentable

weight. Applicant denies this contention. The rules and statutes as well as the case law are quite clear that when a claim includes components of a particular product, i.e., household care product, and refers back to the preamble, then those claims are use type claims for that particular use or product. In other words, since applicant's claims contain at least one ingredient of a household care formulation as well as the water-soluble polymer, these claims are such specific formulation claims and cannot be mistaken for construction material formulations.

On the subject of the preamble, the Federal Circuit in Corning Glass Works v. Sumitomo Electric U.S. A., Inc. (9 USPQ2d 1962, Fed. Cir. 1989) said that:

"No litmus test can be given with respect to when the introductory words of a claim, the preamble, constitute a statement of purpose for a device or are, in themselves, additional structural limitations of a claim. To say that a preamble is a limitation if it gives "meaning to the claim" may merely state the problem rather than lead one to the answer. The effective preamble language can be resolved only on review of the entirety of the patent to gain an understanding of what the inventors actually invented and intended to encompass by the claim."

In the t'Sas patent, the specification makes it clear that the inventor was working on building material formulations. Applicant makes it quite clear that he is dealing with household care formulations. To read the claims of the t'Sas patent in light of the specification indiscriminately to cover all types of formulations would be divorced from reality. The invention is restricted to building material formulations as defined in the specification which is significantly different from what applicant's invention intends. Hence, the claimed preamble as well as the ingredients in the claim limitations of the instant invention defines a specific and definite use that is non-analogous to that of t'Sas. Therefore, t'Sas clearly does not anticipate applicant's invention.

The rejection of claims 1-9, 11-13, 15-31, and 33 under 35 USC 102 (b) as being anticipated by Landoll ('277) is traversed. The Landoll reference is akin to the t'Sas reference mentioned above. Landoll discloses a hydrophobe modified polymer where the hydrophobe is an alkyl having 10-24 carbons. Again, this is a long chain alkyl group as opposed to a group having both short and long chain alkyl moieties, which means

that Landoll is limited only to an associative thickener while the instant invention can be a non-associative as well as an associative thickener. These polymers are simply different. Moreover, Landoll has an enabling disclosure only for shampoos and latex paints based on the working Examples. The disclosure in column 9, lines 5-12, suggest that the composition of this patent can be used as a stabilizer in emulsion polymerization, as thickeners in cosmetics and latex paints, and as flocculent in mineral processing. The patent does not teach or enable a person skilled in the art how to practice this invention for household-care products. This patent simply does not enable a person having an ordinary skill in the art how to practice Landoll's invention in household care formulations. For these reasons, Landoll clearly does not anticipate the instant invention.


The criticality of the instant invention is that applicant can use a non-associative or associative thickener that has never been used before in household care products and has illustrated this point many times in the numerous examples set forth in the specification. Hence, a person skilled in the art armed with this patent would not be able to practice applicant's invention because there is nothing in the reference or any secondary teaching that would lead a person to use the teaching of Landoll in a household care formulation. Hence, a person having an ordinary skill in the art armed with Landoll would not be able to practice applicant's invention in view of the above arguments.

The rejection of claims 1-9, 11-13, 15-31. And 33 under 35 USC 102 (b) as being anticipated by Goddard is traversed. Goddard does not disclose a household care product but rather discloses personal care products. This patent discloses hydrophobically modified cellulose ethers of the landoll patent noted above along with water and other personal care ingredients to prepare a foamable composition suitable for use as foaming personal care products. Hence, this patent is cumulative to the above referenced patents and the arguments set forth above apply equally hereto. Therefore, this patent clearly does not anticipate the instant invention.

The rejection of claims 1-9 and 11- 33 under 35 USC 102 (b) as being anticipated by Bolich et al is traversed. Bolich et al does not disclose a household care product but rather discloses a cosmetic composition for the skin and hair. We agree with the Examiner that the cellulose ethers disclosed in the Landoll patent (mentioned above) are used in this Bolich et al patent along with other ingredients for cosmetics. This reference does not disclose any household care ingredients or give any enabling disclose for use in household care products. The arguments set forth above are repeated herein. Hence, this patent clearly does not anticipate the instant invention.

For the reasons set forth above, it is submitted that this application is now in condition for allowance and prompt notification thereof is respectfully requested.

Respectfully submitted,


David Edwards
Reg. No. 27,293

Hercules Incorporated
Intellectual Property Section
1313 North Market Street
Wilmington, DE 19894-0001
(302) 594-6974

March ¹¹~~8~~, 1999